



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200934048

UIL No. 0408.03-00

MAY 26 2009

LEGEND

Individual A =

Individual B =

Individual C =

Individual D =

Individual E =

Individual F =

IRA X =

Company Y =

Trust T =

Will G =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

SETPRATY

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Amount T =

County E =

State A =

Statute 1 =

Dear:

This is in response to a letter dated April 29, 2008, as supplemented by correspondence dated May 6, 2008, June 3, 2008, June 16, 2008, July 1, 2008, September 5, 2008, November 5, 2008, May 1, 2009 and May 14, 2009, submitted on your behalf by your authorized representative, in which you request a letter ruling under section 408(d) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury, in support of the ruling request:

Individual A, whose date of birth was Date 1, died testate on Date 2, a resident of State A, having attained age 70 1/2. At his death, Individual A owned IRA X with Company A, and had begun receiving distributions from IRA X pursuant to section 401(a)(9) of the Code. As of Date 3, the value of IRA X was Amount T. It has been represented that IRA X either met or meets the requirements of Code section 408(a).

Individual A was survived by a spouse, Individual B, whose date of birth is Date 4, and four children, Individuals C, D, E and F, whose dates of birth are Dates 5, 6, 7 and 8 respectively.

The beneficiary designation form dated Date 9, designated Individual A's children as equal primary beneficiaries of IRA X. The beneficiary designation form further provided that if any of Individual A's children were not then living at his death, the secondary beneficiary of his/her interest was such Individual's estate.

On Date 10, Individual A executed Trust T. Trust T is a grantor trust and is irrevocable. Under Section 3.03 of Trust T, Individual B became the trustee of Trust T upon Individual A's death. Trust T was restated in its entirety on Date 11.

On Date 11, Individual A also executed Will G, naming Individual B as the personal representative of his estate. Article VI of Will G devises the residue of Individual A's estate, following dispositive provisions for the real, personal and mixed, tangible and intangible property in his estate, to Trust T.

Within nine months of Individual A's death, and pursuant to State A Statute 1, Individual A's children executed written disclaimers disclaiming all right, title and interest in IRA X. Immediately thereafter, the representatives of the estates of Individual A's children also executed written disclaimers. Both disclaimers filed by Individual A's children and their estates are referred to collectively herein as the "Disclaimers" and, unless the context indicates otherwise, statements referring to the Disclaimers apply to both the disclaimers filed by Individual A's children and their estates.

The Disclaimers were filed with the Probate Division of the Circuit Court of County E in State A. The IRA custodian was provided with copies of the Disclaimers under a cover letter dated Date 12. The executor of Individual A's estate was provided with copies of the Disclaimers under a cover letter dated Date 13.

You represent that Individual A's children did not accept any of the income or other benefits of the disclaimed property prior to executing the Disclaimers. You also represent that the Disclaimers satisfied the requirements of section 2518 of the Code and applicable State A law. As a result of the Disclaimers, by operation of State A law, section 3.03 of the IRA beneficiary designation, and by specific bequest in Item VI of Will G, IRA X passed to Trust T.

Article 7 of Trust T provides for the creation of Trust T shares upon the death of Individual A. Under Section 7.02 of Trust T, the Trustee is to divide the remainder of Trust T property into two shares, the Non-Marital Share and the Marital Share. Under section 7.02(a), a pecuniary amount equal to the largest amount that can pass free of federal estate tax is to be allocated to the Non-Marital Share. Under section 7.02(b), the Trustee is to allocate to the Marital Share the balance of Trust T property, after funding the Non-Marital Share. Section 7.02(c) of Trust T provides that the Trustee has the complete authority and discretion to satisfy the gift to the Non-Marital Share in undivided interest(s) in property.

Under section 16.01 of Trust T, the Trustee can allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that the Trustee determines. Pursuant to this power, Individual B allocated the entire IRA X to the Marital Trust.

Section 7.03 of Trust T provides that the trustee is to divide the Marital Trust into two trusts, the Exempt Marital Share and the Non-Exempt Marital Share. Under sections 8.01 and 9.01 of Trust T, the Trustee is to pay all income of the Exempt Marital Trust and the Non-Exempt Marital Trust to Individual B.

Sections 8.02 and 9.02 of Trust T requires the Trustee to make discretionary distributions of the principal of the Exempt Marital Trust and the Non-Exempt Marital Trust to pay for Individual B's health, education, maintenance and support.

Section 15.01(a) of Trust T provides that the Trustee may exercise the right to determine the manner and timing of payments (by lump sum or otherwise) of qualified retirement plan benefits.

Section 15.01(b) and 15.01(c) of Trust T provides that if the Exempt or Non-Exempt Marital Trust becomes the beneficiary of death benefits under any qualified retirement plan, the Trustee may withdraw additional amounts from the Exempt or Non-Exempt's Marital Trust's share of the plan as the Trustee deems advisable. Such amounts may then be paid outright to Individual B if they are immediately distributed to Individual B under other provisions of Trust T. Under section 18.06(p) of Trust T, a qualified retirement plan includes an IRA.

Article Eleventh of Individual A's Will G added a provision to the Marital Trust language of Trust T to the effect the trustee of Trust T could pay any amount of the Marital Trust principal to Individual B, beneficiary thereof, for any reason whatsoever.

Pursuant to sections 15.01 and 16.01 of Trust T, and Article Eleventh of Will G, on or about Date 14, Individual B as Trustee of Trust T, made an in-kind distribution of IRA X to herself as beneficiary of Trust T. Individual B then rolled over said distribution (less the calendar year 2008 required minimum distribution which was based on the life expectancy of Individual A) into one or more IRAs set up and maintained in her name.

You represent that all debts, funeral bills, taxes and expenses of Individual A's estate were paid from assets other than IRA X, and that at all times subsequent to Individual A's death, IRA X has been maintained in his name.

Based on these facts and representations, the following rulings are requested:

1. That, IRA X will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Individual B;
2. That, Individual B was eligible to roll over, or have transferred, by means of a trustee-to-trustee transfer, IRA X into an IRA set up and maintained in her name

as long as the rollover of such distribution occurred no later than the 60th day from the date said distribution was received by Individual B; and

3. That, pursuant to ruling 2, for the year in which the distribution of IRA X and subsequent rollover or transfer was made (2008), Individual B was not required to include, in gross income for federal income tax, any portion of the amounts rolled over or transferred from IRA X to an IRA (or IRAs) set up and maintained in her name.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3) of the Code, a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(a)(6) of the Code provides, in relevant part, that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) of the Code shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 408(d)(3)(E) of the Code provides, in general, that distributions required to be made under section 408(a)(6) may not be rolled over.

"Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987- 19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final Regulations" provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution..

Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary

Section 2046 of the Code provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in section 2518.

Section 2518(a) of the Code provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate and gift tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) of the Code defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if --

- (1) the refusal is in writing,
- (2) the writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date that is 9 months after the later of --
 - (A) the date on which the transfer creating the interest in the person is made, or
 - (B) the day on which the person attains age 21,
- (3) the person disclaiming the interest has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either --

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

Section 25.2518-2(c)(3) of the Code provides that, for purposes of the time limitation, the 9-month period for making a disclaimer generally is to be determined with reference to the taxable transfer creating the interest in the disclaimant.

Section 25.2518-2(d)(1) of the Code provides that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act that is consistent with ownership of the interest in the property. Acts indicative of acceptance include: using the property or the interest in the property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in the property. However, a disclaimant is not considered to have accepted the property merely because, under applicable local law, title to the property vests immediately on the decedent's death in the disclaimant.

In this case, Individual A designated his children as the beneficiaries of IRA X on the IRA beneficiary designation form. His children executed written disclaimers within nine months of Individual A's death in which they disclaimed their interests in IRA X. Under State Law, the children are deemed to have predeceased Individual A.

The representatives of the estates of Individual A's children also executed written disclaimers. The Disclaimers were timely filed with the Probate Division of the Circuit Court of County E in State A, and delivered to the executor of Individual A's estate and the IRA X custodian.

It has been represented that the Disclaimers are valid under State A law, that Individual A's children did not accept any of the income or other benefits of the disclaimed property prior to executing the disclaimers and that the disclaimers satisfy the requirements of section 2518 of the Code.

As a result of the Disclaimers, by operation of State A law and section 3.03 of the IRA beneficiary designation, Individual A's estate became the beneficiary of IRA X. By specific bequest in Item VI of Will G, IRA X passed to Trust T.

In this case, although Individual A had not named Individual B as beneficiary of IRA X, under State A law his estate became the beneficiary. Pursuant to his Will G, Individual A left the residue of his estate, including his IRA, to Trust T.

Individual B is Trustee of Trust T and Individual A's surviving spouse. As Trustee, Individual B requested payment of the amounts held in IRA X as beneficiary of the Marital Trust created under the terms of Trust T, which Marital Trust was the beneficiary of IRA X. Upon receipt of the IRA X distribution, Individual B then rolled over said distribution (less the calendar year 2008 required minimum distribution which was based on the life expectancy of Individual A) into one or more IRAs set up and maintained in her name. Said rollover was made within the time frame stated in Code section 408(d)(3)(A)(i).

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, shall not be eligible to roll over the distributed IRA proceeds into her own IRA.

However, the general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. In such a case, the surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

Based on the above, the Service will treat Individual B as a surviving spouse who was eligible to roll over her above-described IRA X interest into an IRA set up and maintained in her name. Therefore, with respect to your ruling requests, we conclude as follows:

1. That, IRA X will not be treated as an inherited IRA within the meaning of section 408(d) of the Code with respect to Individual B;
2. That, Individual B was eligible to roll over or have transferred, by means of a trustee-to-trustee transfer, IRA X into an IRA set up and maintained in her name as long as the rollover of such distribution occurred no later than the 60th day from the date said distribution was received by Individual B; and
3. That, pursuant to ruling 2 above, for the year in which the distribution of IRA X and subsequent rollover or transfer was made (2008), Individual B was not required to include, in gross income for federal income tax, any portion of the amounts rolled over or transferred from IRA X to an IRA set up and maintained in her name.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) (if any).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling letter is based on the assumption that IRA X either met, meets, or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that any rollover IRA established by Individual B will meet the requirements of section 408 at all times relevant thereto. Additionally, it assumes that the disclaimers referenced therein are valid within the meaning of Code section 2518 as represented. Finally, this ruling letter rests on the assumption that Trust T is valid under the laws of State A as represented.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____, I.D. No. _____
Please address all correspondence to

SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: